

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLOTTE A. BUCKINGHAM,

Plaintiff,

vs.

Civil Action 2:07-CV-871
Judge Smith
Magistrate Judge King

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

ORDER

On August 8, 2008, the United States Magistrate Judge issue a *Report and Recommendation* recommending that the decision of the Commissioner be reversed and that the action be remanded for further consideration of plaintiff's mental impairments. Doc. No. 18. This matter is now before the Court on the Commissioner's objections, Doc. No. 19, to that *Report and Recommendation*. Plaintiff had filed a response to the objections, Doc. No. 20. The Court will consider the *Report and Recommendation* and the Commissioner's objections thereto *de novo*. See 28 U.S.C. §636(b).

Plaintiff filed her applications for disability insurance benefits and supplemental security income based upon a combination of physical and mental impairments. At the administrative hearing held on August 21, 2006, Jonathan Nusbaum, M.D., testified as a medical expert but declined to express any opinion as to the effect of plaintiff's depression on her functional capacity. A.R. 529.

Finding that plaintiff's mental impairment is not disabling, the administrative law judge rejected the opinion of every mental health professional who examined plaintiff. "In doing so, the administrative law judge appeared to substitute his own opinion about plaintiff's mental impairment for that of experts in that field." *Report and*

Recommendation, at 13. The Magistrate Judge therefore recommended that the decision of the Commissioner be reversed and that the matter be remanded for further consideration. The Magistrate Judge suggested that, on remand, the administrative law judge may "consider securing the services of a psychiatric or psychological advisor to assist in evaluating the evidence in this record." *Id.*, at 14.

In the objections, the Commissioner does not challenge the Magistrate Judge's observations that the administrative law judge rejected the opinions expressed by every treating and examining mental health expert. The Commissioner points, however, to evidence in the record that would tend to suggest that plaintiff's mental impairment is not disabling.

This Court agrees with the Magistrate Judge that the matter should be remanded for further consideration of plaintiff's mental impairment. The Court agrees, further, that the administrative law judge may be well served by securing the advice of a mental health expert to assist him in evaluating the apparently conflicting evidence.

Accordingly, the *Report and Recommendation* is hereby **ADOPTED** and **AFFIRMED**. The decision of the Commissioner is **REVERSED** and this matter is **REMANDED** for further consideration of plaintiff's mental impairment.

The Clerk shall enter **FINAL JUDGMENT** pursuant to Sentence 4 of 42 U.S.C. §405(g).

s/George C. Smith
George C. Smith, Judge
United States District Court